

Decision No. R04-1273

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04G-146EC

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

COMPLAINANT,

V.

KUBOSKE'S SAN JUAN SCENIC JEEP TOURS, INC., AKA/FKA SAN JUAN SCENIC JEEP TOURS, AKA/FKA KUBOSKE'S, AKA/FKA SAN JUAN SCENIC JEEP TOURS, INC.,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
WILLIAM J. FRITZEL
ASSESSING CIVIL PENALTY**

Mailed Date: October 28, 2004

Appearances:

David A. Beckett, Assistant Attorney General for Staff of the
Public Utilities Commission.

I. STATEMENT

1. On May 14, 2004, Staff of the Public Utilities Commission (Complainant) issued Civil Penalty Assessment Notice (CPAN) No. 28427, naming Kuboske's San Juan Scenic Jeep Tours, Inc., aka/fka San Juan Scenic Jeep Tours, aka/fka Kuboske's, aka/fka San Juan Scenic Jeep Tours, Inc., as Respondent. (Exhibit No. 3)

2. Complainant charged Respondent with six violations of § 40-16-103, C.R.S., failing to register with the Commission, and three violations contrary to § 40-16-104, C.R.S., not having insurance. The total stated penalty is \$37,500.

3. On May 22, 2004, Respondent was served with CPAN No. 28427. (Exhibit No. 4)

4. The hearing of this matter was scheduled for August 31, 2004, however, this date was vacated and rescheduled to October 6, 2004 at the request of Respondent.

5. Decision No. R04-1053-I, mailed on September 2, 2004 was issued giving the parties notice of the date of hearing.

6. The hearing was held on October 6, 2004 as scheduled. Complainant appeared with counsel ready to proceed. Respondent failed to appear. After finding that proper notice was given to Respondent of the date of hearing, and that no good reason appeared on record to justify the absence of Respondent at the hearing, the matter proceeded to hearing. Testimony was received from Complainant's witness, Paul Hoffman, and Exhibit Nos. 1 through 4 were marked for identification and admitted into evidence. At the conclusion of Complainant's case the matter was taken under advisement.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. Mr. Paul Hoffman, Compliance Investigator with the Commission testified that Respondent operates as a seasonal, off-road scenic charter carrier. As such, Respondent is required to register its operations with the Commission under the provisions of § 40-16-103, C.R.S., and to maintain insurance in the required amount, and to file proof of insurance with the Commission as required by § 40-16-104, C.R.S. Since Respondent is a seasonal carrier, it must reapply and register every year with the Commission.

8. Respondent provides off-road scenic charters on a seasonal basis in the Ouray and San Juan County areas of Colorado. Customers who want to travel with Respondent will make a reservation for a tour in a jeep type vehicle.

9. Mr. Hoffman stated that the Commission's records show that Respondent did not register for the tour season of 2003.

10. Mr. Hoffman determined that Respondent was operating in the Ouray, Colorado area. He attempted to contact Respondent, however, he was told that Respondent was conducting a tour. Mr. Hoffman talked to a hotel owner who stated to Mr. Hoffman that during September 2003, Respondent was operating and that some of his guests used Respondent's off-road scenic tour services.

11. Mr. Hoffman testified that the Commission's records show that Respondent failed to register during the 2003 tour season and also failed to file proof of liability insurance for 2003.

12. During the course of his investigation, Mr. Hoffman contacted Ms. Carol Moore, Executive Director of the Friends of Arizona Highways, located in Phoenix, Arizona. Ms. Moore told Mr. Hoffman that her group, the Friends of Arizona Highways were in Colorado during July and September, 2003. Ms. Moore furnished copies of checks that the group issued to Respondent for tours furnished in July and September 2003. (*See Exhibit No. 1.*) The exhibit shows canceled checks issued by Friends of Arizona Highways payable to Respondent on July 24, 2003 in the amount of \$962.50 for an off-road scenic charter tour. The exhibit also shows a copy of a canceled check dated November 15, 2002 issued by the Friends of Arizona Highways payable to Respondent in the amount of \$2,800 as a deposit for the July and September 2003 tours taken by the group. Both checks were endorsed by Respondent and presented to a bank for payment.

13. Mr. Hoffman received a letter from Robyn Noll, the Director of Friends of Arizona Highways dated August 5, 2004. In the letter, Ms. Noll stated that the group used the

off-road scenic tour service offered by Respondent during the period July 19 through 24, 2003 and on September 20 and 25, 2003. (*See* Exhibit No. 2.)

14. The evidence of record establishes that Staff has met its burden to establish that Respondent violated the provisions of § 40-16-103, C.R.S., on the dates cited in CPAN No. 28427 by failing to register with the Commission. The evidence also establishes that Respondent provided off-road scenic tours for hire. The evidence further establishes that Respondent failed to have proper insurance as required by § 40-16-104, C.R.S. on the dates cited in the CPAN.

15. Respondent will be assessed a penalty as charged in CPAN No. 28427 of \$37,500.

16. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. Respondent Kuboske's San Juan Scenic Jeep Tours, Inc., aka/fka San Juan Scenic Jeep Tours, aka/fka Kuboske's, aka/fka San Juan Scenic Jeep Tours, Inc., is assessed a civil penalty in the amount of \$37,500.

2. Respondent shall within 30 days of the effective date of this Recommended Decision remit to the Public Utilities Commission the total civil penalty in the amount of \$37,500.

3. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

5. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge

G:\ORDER\146EC.doc:srs